

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ADALBERTO SOLIS,

Plaintiff,

v.

PORTILLO,

Defendant.

Case No. 1:20-cv-00048-AWI-EPG (PC)

ORDER GRANTING DEFENDANT'S  
REQUEST FOR EXTENSION OF TIME TO  
FILE REPSONSIVE PLEADING AND  
VACATING PLAINTIFF'S DEADLINE TO  
FILE REQUEST FOR ENTRY OF  
DEFAULT

(ECF Nos. 22 & 23)

Adalberto Solis ("Plaintiff") is a former prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Defendant executed a waiver of service of summons (ECF No. 20), but failed to file a responsive pleading within the time period laid out in the waiver.

Accordingly, on March 29, 2021, the Court gave Plaintiff fourteen days to file a request for entry of default. (ECF No. 22). The Court also directed the Clerk of Court to send a copy of the order to County Counsel Daniel C. Cederborg. (*Id.* at 2).

On April 6, 2021, Defendant filed a request for an extension of time to file his responsive pleading, or, in the alternative, a request to set-aside the entry of default. (ECF No. 23). "Defendant through County Counsel's Office [] requests an extension of time to finalize details of his representation, review the Complaint and other relevant documents, and to prepare and file a responsive pleading on Defendant's behalf in this matter, for a minimum of 45 days." (*Id.* at 4).

1 According to defense counsel, it was Defendant's "understanding and belief, after a  
2 conversation with his union representative," that, after signing and returning the waiver of  
3 summons, "no further action on his part was required in response to the complaint. He  
4 believed, albeit incorrectly, that the Fresno County Counsel's Office and the Fresno County Jail  
5 would receive notice of the pending action from the U.S. Marshal." (Id. at 2).<sup>1</sup>

6 "This matter has only just begun, and Defendant does not believe and can see no  
7 prejudice to Plaintiff in this matter due to the Court granting this brief request. Defendant  
8 contends the interests of justice are served under the circumstances presented, and by having  
9 the matter considered on its merits." (Id. at 4).

10 As default has not been entered, there is no need to set it aside. As to Defendant's  
11 request for an extension of time to file his responsive pleading, the Court will grant it, and  
12 Defendant will be given forty-five days to file his responsive pleading. See, e.g., Pena v.  
13 Seguros La Comercial, S.A., 770 F.2d 811, 814 (9th Cir. 1985) ("[D]efault judgments are  
14 generally disfavored. Whenever it is reasonably possible, cases should be decided upon their  
15 merits.").

16 As the Court is granting Defendant's request for an extension of time to file his  
17 responsive pleading, it will also vacate Plaintiff's deadline to file a request for entry of default.

18 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 19 1. Defendant has forty-five days from the date of service of this order to file his  
20 responsive pleading; and  
21 2. Plaintiff's deadline to file a request for entry of default is vacated.

22  
23 IT IS SO ORDERED.

24 Dated: April 6, 2021

25 /s/ Eric P. Grogg  
UNITED STATES MAGISTRATE JUDGE

26  
27  
28 <sup>1</sup> A declaration from Defendant in support of the request is attached.